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Supreme Court, U.S.
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No. 92-194

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

ROBERT L. TUCKER, JOYCE BANKS, WILL McGAUGHY, NAPOLEON HANEY, LAUREL PRUSSING, JOAN M. CLARK, OUSLEY H. WALKER, CAROLYN TONEY, JOSEPH BELMAN, President of the Illinois Hispanic Council, Joliet Chapter, RICHARD J. WALSH, President of the Illinois State Federation of Labor, AFL-CIO, and JAMES CLARIN,

Petitioners,

v.

UNITED STATES DEPARTMENT OF COMMERCE, ROBERT A. MOSBACHER, as Secretary of the Department of Commerce, MICHAEL R. DARBY, as Under Secretary for Economic Affairs of the United States Department of Commerce, BUREAU OF THE CENSUS, BARBARA E. BRYANT, as Director of the Bureau of the Census, GEORGE H. W. BUSH, as President of the United States, and DONNALD K. ANDERSON, as Clerk of the United States House of Representatives,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The respondents cite *Franklin v. Massachusetts*, ___ U.S. ___, 112 S.Ct. 2767 (1992), and *Department of Commerce v. Montana*, ___ U.S. ___, 112 S.Ct. 1415 (1992), in support of their argument that petitioners' petition for writ of *certiorari* should be denied.

Massachusetts and *Montana*, however, call for this Court to review the merits of petitioners' claims. In both cases, this Court determined that it had the ability to decide and did decide constitutional claims directed at the 1990 Decennial Census. Petitioners respectfully submit that this Court's recent decisions require the same, if not greater, scrutiny of their constitutional claims: after all, in both *Massachusetts* and *Montana*, the people had at least been counted, while this case challenges our Government's inexcusable and inexplicable failure even to count people -- predominantly African-Americans and Hispanics -- whom the Government knows and has known for 50 years to actually exist, and there are statistical measures available to ensure that these Americans are included in

the census. The questions in *Massachusetts* and *Montana* related to policy decisions about how to allocate military personnel and Congressional delegations given a specific population count. This case concerns a failure to count people which results from a refusal to employ valid and accepted methods to correct a known and recognized defect in the enumeration process. The "policy" decision made here, as asserted in petitioners' complaint, is the decision not to follow what petitioners view to be the mandate of the Constitution, and that is not and should never be a "policy" decision immune from judicial review.

Respectfully submitted,

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